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Reply to: Seattle Office

July 21, 2010

Jim Tompkins
Registration Division, Herbicide Branch
Environmental Protection Agency HQ
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 7505P
Washington, D.C. 20460

Re: Habitat Herbicide, EPA Registration No. 241-426

Dear Mr. Tompkins:

As you may recall from previous conversations that we have had, I represent Fritz Cohen, who owns land in Willapa Bay, Washington. I recently spoke with you about the history of registration for Habitat and, more specifically, about the use of Habitat in marine and estuarine areas. I am writing now to request copies of documents related to the use of Habitat Herbicide in marine and estuarine sites pursuant to the Freedom of Information Act.

In a letter from you to BASF Corporation dated August 25, 2009, you instructed BASF Corporation to remove "estuary" and "marine" from the list of permissible aquatic sites on its Habitat label based on the 2005 Imazapyr RED. Enclosed with your letter was a memo from EPA Record Reviewer, Beth Benbow, summarizing the decision rationale for the label restriction. Ms. Benbow attached copies of excerpts from an EPA risk assessment that concluded that broadcast applications of Arsenal Herbicide to aquatic areas "must not include marine and estuarine areas." I have enclosed herein a copy of your letter, Ms. Benbow's memo, and the excerpts from the study attached to her memo.

I am writing to request a copy of the entire document from which those excerpts attached to Ms. Benbow's memo (relevant to this issue) were taken. In addition, I am requesting copies of any other scientific study or other documentation that the EPA relied on for the conclusion that applications of Arsenal Herbicide must not include marine and estuarine areas.¹

My understanding from our last conversation is that BASF Corporation had objected to the prohibition of use of Habitat in the marine or estuarine environment and you were, therefore,

¹ I requested this information from you over the phone some time ago, and you indicated that you could not find the documents. Because I had not made my request in writing, I am not sure whether my request was clear. I thought it prudent, therefore, to submit my request in writing to be certain we are on the same page.

reviewing the issue again. You indicated that you would provide notice to me of any decisions made by the EPA on the matter. Because I had heard nothing from you, I was surprised to see that you had e-mailed the Washington State Department of Agriculture stating that "the Registration Division is proposing to continue the use of Habitat in marine & estuarine use sites. A letter accepting the Habitat label EPA Reg. # 421-426 [sic] with the marine & estuarine use should be posted in the near future."² E-mail from Tompkins to Johanson (Jul. 14, 2010).

In addition to the documents requested above, I am also writing to request any and all documents related to or supporting the Registration Division's decision to allow the use of Habitat in marine and estuarine use sites. I would like copies of any scientific studies that the EPA created or relied upon as well as any other information or documents related to this recent decision.

Thank you for your attention to this matter. I look forward to your response.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Claudia M. Newman

CMN:pse

Enclosure

cc: Fritzi Cohen
Linda Jackson, EPA Administrator

² I presume that you were referring to EPA Reg. # 241-426 but simply juxtaposed the numbers.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 25 2009

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Jeffrey H. Birk, Ph.D.
BASF Corporation
26 Davis Drive
Research Triangle Park, NC
27709-3528

Subject: Label Amendment: Request to reconsider comments of EPA letter dated 12-16-08
Product Name: Habitat ® herbicide
EPA Reg. No. 241-426
Application Dated July 7, 2009

Dear Dr. Birk:

The labeling referred to above, submitted in connection with registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, is acceptable, provided you make the following label changes before you release the product for shipment.

- a. Per the Imazapyr RED, make the following revisions to the PPE section:
 - i. Add the text, "Mixers, Loaders" in front of "Applicators and other Handlers must wear:"
 - ii. In addition, add the following statements after "Keep and wash PPE separately from other laundry.":

"Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them."

- b. Per the Imazapyr RED, add an Engineering Controls Statement for aerial applicators to the label following the 'Physical and Chemical Hazards' section. The Engineering Controls statement must read as follows:

"Engineering Controls Statement

Pilots must use an enclosed cockpit that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240(d)(6)]."

Continued on Page 2

- c. Per the Imazapyr RED, a 'User Safety Recommendations' section must be added to the label immediately following the Engineering Controls statement. These statements must be placed in a box as follows:

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands with plenty of soap and water before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

- d. Per the Imazapyr RED, the following statements must be added to the 'Environmental Hazards' section as the first two sentences of the section:

"This product is toxic to plants. Drift and runoff may be hazardous to plants in water adjacent to treated areas."

- e. Per the Imazapyr RED, this product label must include an Agricultural Use Requirements box and a Non-Agricultural Use Requirements box since its use sites of grass pasture and rangeland include 'hay cutting,' which is considered an agricultural use.

The Agricultural Use Requirements box must include the following REI statement and Early Entry PPE:

"Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 48 hours.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is:

- Coveralls
- Shoes plus socks
- Chemical-resistant gloves made of any waterproof material
- Protective eyewear

The Non-Agricultural Use Requirements box must include the following entry restriction statement:

"Do not enter or allow others to enter treated areas until sprays have dried."

- f. Delete "General" from the headings "General Information" and "General Precautions and Restrictions" as this is an implied safety claim and thereby makes all language following these headings unenforceable. "General" may be replaced with "Product" or "Pesticide."
- g. Remove "recommended" and "suggested" in all references to application rates. The words "listed" or "specified" may be used in place of these terms.
 - i. see the second paragraph of the 'Aerial Applications' section
 - ii. see the last sentence of the first paragraph under 'Foliar Applications' section
- h. Add the following paragraph to the 'Noncropland Uses' section:

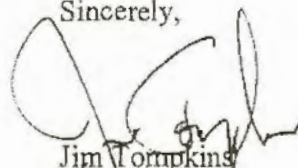
"Applications to non-cropland areas are not applicable to treatment of commercial timber or other plants being grown for sale or other commercial use, or for commercial seed production, or for research purposes."
- i. Remove 'estuary' and 'marine' from the list of permissible aquatic sites for this product. The Risk Assessment for this product explicitly states the following as a use limitation:

"Do not apply to marine or estuarine areas."

The risk assessment for Imazapyr did not specifically indicate restrictions needed for recreational use or livestock use of treated waters, and therefore the three sections of text that are of concern may remain on the label.

A stamped copy of your labeling is enclosed for your records. You must submit one (1) copy of the final printed label before you release the product for shipment. Products shipped after the next printing must bear the new revised label. If these conditions are not complied with, the registration will be subject to cancellation in accordance with FIFRA sec. 6(e). Your release for shipment of the product constitutes acceptance of these conditions. Amended labeling will supercede all previously accepted ones.

Sincerely,



Jim Tompkins
Product Manager 25
Herbicide Branch
Registration Division (7505P)

Note for Record:

August 13, 2009

Reviewer: Beth Benbow

Decision rationale for allowing the 'Recreational use of Water in Treatment Area' and 'Livestock Use of Water in/from Treatment Area' sections to remain on the Habitat ® herbicide label is based on the risk assessment for Imazapyr.

The livestock metabolism studies indicate that the total radioactive residue (TRR) in the fat, liver, leg and loin muscle were nondetectable (<0.05 ppm).

The MOEs presented for the post-application swimmer exposure to imazapyr in aquatic weed control applications are greater than 100, and therefore, do not exceed HED's level of concern for short-term recreational exposures.

The risk assessment for Imazapyr also indicated that broadcast applications to aquatic areas must not include marine and estuarine areas. Therefore, the Agency requests removal of these aquatic use sites from the product label.

Table 4. Summary of Proposed Directions for Use of Imazapyr.					
Application Timing, Type, and Equip.	Formulation ^a [EPA Reg. No.]	Maximum Applic. Rate (lb ae/A) ^b	Max. No. Applic./Season	PHI (days)	Use Directions and Limitations ^c
Aquatic (fresh water) ^d					
Broadcast application to aquatic areas or draw down area (Surface or aerial equipment)	2 lb ae/gal EC [241-346]	1.5	NS	NA	Do not apply to marine or estuarine areas. Do not apply within ½ mile (standing water) or within ½ mile upstream (flowing water) of an <u>active</u> irrigation or potable water intake. For application, within ½ mile of a water intake, the water intake must be turned off for a minimum of 48 hours after the application. Allow 1 hour after treatment before refilling draw down area. Apply in a minimum of volume of 5 gal/A.

NS = Not specified.

PHI = pre-harvest interval.

Label Deficiencies

Provided that the petitioner 1) adds a statement prohibiting more than one application of imazapyr per season and 2) submits residue data for irrigated crops or adds a label restriction that prohibits the use of treated water for irrigation purposes for 120 days following application or demonstrates non-detectable residue levels of imazapyr in irrigation water by laboratory analysis prior to use, the proposed use directions adequately reflect the use pattern for imazapyr application to aquatic systems and grass pastures and rangeland. A revised Section B should be submitted.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 16, 2010

RECEIVED

JUL 19 2010

Ms. Claudia M. Newman
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154

BRICKLIN NEWMAN DOLD, LLP

Dear Ms. Newman:

I am in receipt of your letter dated July 7, 2010 requesting that the Department of Ecology (Ecology) revoke coverage of the Aquatic Noxious Weed Control National Pollutant Discharge Elimination System General Permit for the discharge of imazapyr in Willapa Bay. You based this request on information that indicates that the Environmental Protection Agency (EPA) has withdrawn marine and estuarine use from the current imazapyr label (Habitat™ and Polaris™).

Ecology understands that EPA has not withdrawn this use for the current imazapyr label (see the enclosed communication from EPA concerning the registration status of imazapyr). As this remains an EPA-registered use of this herbicide, Ecology does not intend to revoke permit coverage for the discharge of imazapyr in Willapa bay.

If you have any questions, please contact me at 360-407-6562, or via email at Kathy.Hamel@ecy.wa.gov.

Sincerely,

Kathy Hamel
Aquatic Plant Specialist
Water Quality Program

Enclosure

cc: Bill Moore
Dewey Weaver
Sonia Wolfman



Hamel, Kathy (ECY)

Subject: FW: Use of Habitat on marine/estuarine sites

From: Tompkins.Jim@epamail.epa.gov [mailto:Tompkins.Jim@epamail.epa.gov]
Sent: Wednesday, July 14, 2010 12:20 PM
To: Johansen, Erik (AGR)
Subject: Re: Use of Habitat on marine/estuarine sites

The Registration Division is proposing to continue the use of Habitat in marine & estuarine use sites. A letter accepting the Habitat label EPA Reg # 421-426 with the marine & estuarine use should be posted in the near future.

Jim Tompkins
Team Leader 25
Herbicide Branch
Registration Division

Phone 703 305 5697
Fax 703 308 0029
E-mail Tompkins.jim@EPA.GOV

From: "Johansen, Erik (AGR)" <EJohansen@agr.wa.gov>
To: Jim Tompkins/DC/USEPA/US@EPA
Date: 07/14/2010 03:06 PM
Subject: Use of Habitat on marine/estuarine sites

Hi Jim,

WSDA has received an inquiry from the Washington Department of Ecology regarding the use of Habitat (EPA Reg. No. 241-426) on marine/estuarine sites. Ecology was contacted by an individual that expressed concerns regarding this use, and I agreed to contact EPA in order to assist Ecology with their response.

The Reregistration Eligibility Decision (RED) for imazapyr and the 8/25/2009 EPA stamped label for Habitat indicate that marine and estuarine sites need to be removed from the label. However, the RED for imazapyr does not indicate that there are any risks of concern to aquatic invertebrates or fish, and Appendix B indicates that EPA has acceptable data on file for several freshwater and estuarine/marine organisms (MRID numbers were assigned).

From our conversation earlier today, my understanding is that EPA Registration Division intends to continue to allow the use of Habitat on marine/estuarine sites. This decision is supported by comments that you received from EPA Health Effects Division (HED) and EPA Environmental Fate and Effects Division (EFED) regarding the risk assessment for imazapyr. HED and EFED have indicated to you that imazapyr use on marine/estuarine sites was assessed in the risk assessment for imazapyr and that use on marine/estuarine sites is acceptable. Is my understanding correct?

Take care,

Erik W. Johansen
Special Pesticide Registration Program Coordinator
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